



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[CG Docket Nos. 13-24 and 03-123; FCC 19-118; FRS 16309]**

**TRS Fund Contributions**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) modifies the cost recovery rules for Internet Protocol Captioned Telephone Service (IP CTS) so that intrastate as well as interstate end-user revenues of telecommunications carriers and Voice over Internet Protocol (VoIP) service providers are included in the calculation of Telecommunications Relay Services (TRS) Fund contributions to support the costs of providing IP CTS.

**DATES:** *Effective Date:* This rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

*Compliance Date:* Intrastate carriers and VoIP service providers shall be required to contribute revenue to fund intrastate IP CTS starting July 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418-1264, or e-mail [Michael.Scott@fcc.gov](mailto:Michael.Scott@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, document FCC 19-118, adopted November 22, 2019, released November 25, 2019, in CG Docket Nos. 13-24 and 03-123. The Commission sought comment on the issue in the Further Notice of Proposed Rulemaking (*2018 IP CTS Modernization FNPRM*), published at 83 FR 33899, July 18, 2018. The full text of document FCC 19-118 will be available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS) and during regular business hours at the FCC Reference Information Center, Portals II, 445 12<sup>th</sup>

Street, SW, Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov), or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY).

### **Congressional Review Act**

The Commission sent a copy of document FCC 19-118 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

### **Final Paperwork Reduction Act of 1995 Analysis**

Document FCC 19-118 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104-13. Therefore, it also does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, *see* 44 U.S.C. 3506(c)(4).

### **SYNOPSIS:**

1. Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure that “interstate and intrastate” TRS are available to individuals who are deaf, hard of hearing, or deaf-blind or who have a speech disability. 47 U.S.C. 225. Section 225 of the Act also authorizes, but does not require, the establishment of state-administered TRS programs, subject to approval by the Commission. The Act directs the Commission to adopt, administer, and enforce regulations governing the provision of interstate and intrastate TRS, including rules on cost separation, which “shall generally provide” that interstate TRS costs are recovered from interstate services and intrastate TRS costs are recovered from the intrastate jurisdiction. 47 U.S.C. 225(d)(3)(B). To provide for the recovery of interstate TRS costs, the Commission established the interstate TRS Fund in 1993. Interstate telecommunications carriers, as well as providers of interconnected and non-interconnected VoIP service, are required to contribute to the TRS Fund, on a quarterly basis, a specified percentage of their interstate end-

user revenues for the prior year. The scope of the TRS Fund changed beginning in 2000. To encourage the development of Internet-based TRS, including IP CTS, the Commission adopted interim measures authorizing use of the TRS Fund to compensate TRS providers for all compensable costs of Internet-based TRS calls, whether interstate or intrastate. Meanwhile, TRS Fund contributions continued to be collected solely from providers of interstate telecommunications and VoIP services based on a percentage of their interstate end-user revenues.

2. The Commission amends its rules to provide that TRS Fund contributions for the support of IP CTS shall be calculated based on the total interstate and intrastate end-user revenues of each telecommunications carrier and VoIP service provider. As a result, TRS Fund contributions will be required from providers of intrastate-only telecommunications and VoIP services. The total contributions needed to support the TRS Fund will not be affected. The Commission makes this change for several reasons.

3. *First*, the current arrangement, whereby all IP CTS costs are compensated from the TRS Fund, with contributions limited to a percentage of contributors' interstate revenues, was authorized only as an interim measure, to speed the development of IP CTS.

4. *Second*, the inherent inequities and limitations of this contribution arrangement loom much larger today, given the current size of the IP CTS funding requirement. Today, IP CTS expenditures are projected to be \$913 million in Fund Year 2019-20—64.5% of TRS Fund payments to TRS providers. As a result, the burden of supporting IP CTS has widely disparate impacts on TRS Fund contributors, based solely on the extent of interstate usage of their services. And providers of intrastate-only services contribute nothing to support IP CTS.

5. *Third*, this asymmetric allocation of the IP CTS funding burden has not been shown to be justified by the jurisdictional characteristics of the telephone calls for which captions are provided via IP CTS. IP CTS, which is available to consumers in every state, provides captions for both intrastate and interstate phone calls.

6. *Fourth*, the recovery of IP CTS costs based on interstate revenues alone may create unintended market distortions, improperly increasing the price of, and reducing the demand for, interstate telephony services.

7. *Fifth*, the total amount of interstate end-user revenues from which TRS Fund contributions can be drawn has been steadily decreasing over time, worsening the impact on interstate service providers and users. Ensuring that contributions to support IP CTS are calculated based on intrastate as well as interstate revenues will not only address the asymmetry of the funding burden but also strengthen the funding base for this service.

8. *Legal Authority.* The Commission has statutory authority under section 225 of the Act to include the intrastate end-user revenues of telecommunications carriers and VoIP service providers in the calculation of TRS Fund contributions to support IP CTS. Section 225 expressly directs the Commission to ensure that both interstate *and intrastate* TRS are available and grants the Commission broad authority to establish regulations governing both interstate and intrastate TRS, including, explicitly, TRS cost recovery. 47 U.S.C. 225(b), (d)(3). Indeed, Congress expressly carved section 225 out from the Act’s general reservation of state authority over intrastate communications. 47 U.S.C. 152(b).

9. Where a state undertakes to offer intrastate TRS through a state program, section 225 of the Act allows the state to determine how its program is funded. However, if a type of TRS (such as IP CTS) is *not* made available through a state program, the Commission—which is mandated to ensure the availability of both interstate *and intrastate* TRS—necessarily retains authority to enable cost recovery. Indeed, section 225 of the Act affords the Commission, without limitation, “the same authority, power, and functions with respect to *common carriers engaged in intrastate communication* as the Commission has in administering and enforcing the provisions of this [Act] with respect to any common carrier engaged in interstate communication.” 47 U.S.C. 225(b)(2) (emphasis added). This includes the authority to collect contributions from intrastate carriers where necessary to ensure that the provision of TRS is

adequately funded—and Congress has elsewhere prescribed that VoIP service providers shall “participate in and contribute to the Telecommunications Relay Services Fund . . . in a manner prescribed by the Commission . . . consistent with and comparable to the obligations of other contributors to such Fund.” 47 U.S.C. 616.

10. A contrary reading of section 225 of the Act could hinder the Commission’s ability to continue ensuring the availability of technologically advanced versions of TRS, such as IP CTS, which are far more widely used and enable more effective communication than the older versions offered through state programs. Internet-based TRS has not been added to state programs largely due to jurisdictional concerns. Given the apparent limits on state commissions’ authority, the Commission’s ability to structure appropriate funding for Internet-based TRS should not be artificially constrained by a distorted reading of the federal statute.

11. *Arguments for Deferral.* The Commission sees no need to defer expansion of the contribution base in order to address the matter of how IP CTS is classified as a service. The text of section 225 of the Act leaves no doubt that TRS—whatever the classification, and whether or not the Internet is involved—can be used for intrastate as well as interstate calling, and that the resulting costs are recoverable from providers of intrastate as well as interstate telecommunications and VoIP services. The Commission also declines to defer this matter pending referral to and completion of Joint Board proceedings. The Commission is not modifying how TRS cost separation is determined. Indeed, Fund contributions will be implemented without cost separation, and will be unaffected by how many IP CTS minutes might be deemed intrastate or interstate. Finally, the Commission declines to defer expansion of the IP CTS contribution base pending further measures to address waste, fraud, and abuse, which are based on the incorrect assumption that such expansion is needed solely due to the current level of program costs.

12. *Implementation.* The Commission adopts a single contribution factor for IP CTS that is applied to all the end-user revenues of each TRS Fund contributor. First, the TRS Fund

administrator shall determine an IP CTS revenue requirement, which shall include the portion of the TRS Fund reserve that is attributable to IP CTS. Next, based on the total intrastate and interstate end-user revenue data reported by TRS Fund contributors on Forms 499-A, the TRS Fund administrator shall compute a separate TRS Fund contribution factor for IP CTS, by dividing the IP CTS revenue requirement by contributors' total intrastate and interstate end-user revenues. This contribution factor shall then be used to determine the portion of each contributor's total end-user revenue that must be paid into the TRS Fund to support IP CTS.

13. The single-factor method requires only minor modification of the current TRS Fund contribution rules, is simple and feasible to administer, and distributes the funding obligation in a reasonably equitable manner, ensuring that each TRS Fund contributor pays the same percentage of its total interstate and intrastate end-user revenues for support of IP CTS. An alternative approach, which would entail the calculation of separate contribution factors for interstate and intrastate IP CTS, based on estimates of the proportions of IP CTS minutes and provider costs that are interstate and intrastate, is impracticable at this time.

14. The Commission directs the Wireline Competition Bureau to revise the instructions for Form 499-A as necessary to conform to document FCC 19-118. The Commission also directs the Universal Service Administrative Company (USAC) and the TRS Fund administrator to take steps to ensure that providers of telecommunications services and VoIP services, including entities with only intrastate revenue, are able to register and remit payment to the TRS Fund.

15. *Compliance date.* Intrastate carriers and VoIP service providers shall be required to contribute revenue to fund intrastate IP CTS starting with TRS Fund Year 2020-21. This will allow a reasonable time for the Commission to amend relevant forms, for any carriers and VoIP service providers that have only intrastate revenue to register and prepare for submission of IP CTS contributions to the TRS Fund administrator, and for the TRS Fund administrator and USAC to process such registrations in accordance with the rules adopted herein.

16. *Economic Impact.* If TRS Fund expenditures on IP CTS were to continue at the 2019-20 level of approximately \$913 million, then approximately 41% of this total, or \$374 million, would be contributed as a percentage of interstate end-user revenues, and 59%, or \$539 million, would be contributed as a percentage of intrastate end-user revenues. This represents a \$539 million transfer in the incidence of TRS Fund contributions from the interstate to the intrastate jurisdiction, although the total funding requirement does not change.

17. Expanding the TRS Fund contribution base for IP CTS to include intrastate revenues will likely reduce the TRS funding costs that are passed on by contributing providers to users of interstate telecommunications and VoIP services, and concomitantly increase the costs included in rates paid by users of intrastate services. To the extent it has such effects, this rule change will remove distortions in the relative prices of intrastate and interstate services, reducing such prices where they are high and raising such prices somewhat where they are low.

18. *The State Program Alternative.* In the *2018 IP CTS Modernization FNPRM*, as an alternative way to address the inequity in IP CTS cost recovery, the Commission sought comment on whether to require that IP CTS be included in all state-administered TRS programs. Under this approach, contributions to the TRS Fund would continue to be based on interstate end-user revenues only. However, the Fund would support only interstate IP CTS costs, while the states themselves would determine how to fund intrastate IP CTS, just as they currently do for non-Internet-based forms of TRS. The Commission concludes that this alternative would not be practicable or beneficial at this time. To date, no state has indicated any degree of readiness to take responsibility for administering and funding intrastate IP CTS, and a number of states raise questions regarding their authority under state law to incorporate IP CTS into state programs. In addition, mandating the inclusion of IP CTS could lead some states to terminate their TRS programs. Further, state administration of IP CTS could lead to the elimination of competition among multiple IP CTS providers, a result that would conflict with the Commission's prior support of such competition to encourage higher quality IP CTS offerings.

19. Although the Commission is not mandating states to incorporate IP CTS into their TRS programs, a state is not precluded from seeking Commission approval to add IP CTS to a state-funded TRS program. If, at some future point, a state seeks authority to fund and administer IP CTS, the Commission will address at that time the related issues of competition policy and program efficiency. In the event that a state's request to fund and administer intrastate IP CTS is approved, appropriate steps will be taken at that time to identify or estimate intrastate IP CTS minutes and costs and determine by how much to reduce the TRS Fund contributions from telecommunications and VoIP service providers operating within the state.

#### **Final Regulatory Flexibility Analysis**

20. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into the *2018 IP CTS Modernization FNPRM*. The Commission sought written public comment on the proposals in the *2018 IP CTS Modernization FNPRM*, including comment on the IRFA. No comments were received in response to the IRFA.

#### *Need For, and Objectives of, the Rules*

21. Document FCC 19-118 modifies the cost recovery rules for IP CTS to provide a fair and reasonable allocation of the funding burden for TRS. Specifically, providers of intrastate as well as interstate telecommunications and VoIP services must contribute to the TRS Fund for the support of IP CTS, based on a percentage of their total annual end-user revenues from intrastate, interstate, and international services. The TRS Fund administrator will compute a separate TRS Fund contribution factor for IP CTS, by dividing the IP CTS revenue requirement by contributors' total intrastate and interstate end-user revenues. This contribution factor shall then be used to determine the portion of each contributor's total end-user revenue that must be paid into the TRS Fund to support IP CTS. Requiring contributions to include intrastate revenue to support IP CTS removes contribution asymmetry and ensures intrastate revenue is available to support intrastate IP CTS. This action both reduces the inequitable burden on providers of



interstate telecommunications and VoIP services and strengthens the funding base for this critical service.

*Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

22. No comments were filed in response to the IRFA.

*Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*

23. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

*Small Entities Impacted*

24. The rules adopted in document FCC 19-118 will affect the obligations of intrastate and interstate telecommunications carriers, as well as providers of interconnected and non-interconnected VoIP service. These services are included in the economic categories: Wired Telecommunications Carriers, Telecommunications Resellers, Wireless Telecommunications Carriers (except Satellite), and All Other Telecommunications.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

25. Expanding the TRS Fund contribution base to include intrastate revenue for IP CTS will require providers of intrastate telecommunications and VoIP services that are not currently registered with the TRS Fund administrator to register with the administrator and submit contribution payments to the TRS Fund. Contributors to the TRS Fund will see two contribution rates, one for IP CTS and another for all other forms of TRS, but there will not be a change to how entities report their revenues on the FCC Form 499-A for purposes of contributing to the TRS Fund.

*Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives*

*Considered*

26. Expanding the TRS Fund contribution base to include intrastate revenue for IP CTS requires small entities that provide only intrastate telecommunications and VoIP services to register with and submit payment to the TRS Fund administrator. However, such burdens would

be offset by the public benefits of appropriately funding the provision of IP CTS from a broader contribution base. Expanding the contribution base to include intrastate revenue will also reduce the contribution burden of providers of interstate telecommunications and VoIP service by increasing the number of overall contributors to include providers of intrastate-only telecommunications and VoIP services, and by expanding the total revenue from which providers make contributions, thereby decreasing each individual provider's total annual contribution from interstate end-user revenues. In addition, expanding the contribution base ensures a more equitable distribution of costs that better aligns with use of interstate and intrastate IP CTS. Specifically, the adopted contribution approach ensures that each contributor pays the same percentage of its total interstate and intrastate end-user revenues for support of IP CTS. The prior approach, by contrast required that 100% of the contributions be based on interstate revenues, even though it is likely that less than half of IP CTS minutes are interstate.

#### **ORDERING CLAUSES**

27. Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225, document FCC 19-118 IS ADOPTED, and part 64 of title 47 is amended.

#### **List of Subjects in 47 CFR Part 64**

Individuals with disabilities, Telecommunications, Telecommunications relay services.  
Federal Communications Commission.

**Marlene Dortch,**  
Secretary.

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 64 as follows:

### **PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, and 1401-1473, unless otherwise noted.

2. Amend § 64.604 by revising paragraphs (c)(5)(ii) and (c)(5)(iii)(A), (B), and (I) to read as follows:

#### **§ 64.604 Mandatory minimum standards.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph (c)(5)(ii), costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.606, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate VRS and IP Relay shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Costs caused by the provision of interstate and intrastate IP CTS, if not provided through a certified state program under § 64.606, shall be recovered from all subscribers for every interstate and intrastate service, using a shared-funding cost recovery mechanism.

(iii) \* \* \*

(A) *Contributions.* Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP service providers pursuant to § 64.601(b)) and every provider of non-interconnected VoIP service shall contribute to the TRS Fund as described in this paragraph (c)(5)(iii): for the support of TRS other than IP CTS on the basis of interstate end-user revenues; and for the support of IP CTS on the basis of interstate and intrastate revenues. Contributions shall be made by all carriers who provide interstate or intrastate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contributions to the TRS fund shall be the product of their subject revenues for the prior calendar year and the applicable contribution factors determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to the contributors' revenues subject to contribution. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject contributor that has revenues subject to contribution must contribute at least \$25 per year. Contributors whose annual contributions total less than \$1,200 must pay the entire contribution at the beginning of the contribution period. Contributors whose contributions total \$1,200 or more may divide their contributions into equal monthly payments. Contributors shall complete and submit, and contributions shall be based on, a "Telecommunications Reporting Worksheet" (as published by the Commission in the **FEDERAL REGISTER**). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the

discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Consumer and Governmental Affairs Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

\* \* \* \* \*

(I) *Information filed with the administrator.* The Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior executive of a provider submitting minutes to the Fund for compensation must, in each instance, certify, under penalty of perjury, that the minutes were handled in compliance with section 225 of the Communications Act of 1934 and the Commission's rules and orders, and are not the result of impermissible financial incentives or payments to generate calls. The CEO, CFO, or other senior executive of a provider submitting cost and demand data to the TRS Fund administrator shall certify under penalty of perjury that such information is true and correct. The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Consumer and Governmental Affairs Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*see* § 54.701 of this chapter), the North American Numbering Plan administration cost recovery (*see* § 52.16 of this chapter), and the long-term local number portability cost recovery (*see* § 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate and intrastate common carriers and VoIP service providers, and aggregating such fee payments for submission to the Commission. The

Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

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[FR Doc. 2019-27391 Filed: 1/3/2020 8:45 am; Publication Date: 1/6/2020]